

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2020

Public Authority: Old Somerby Parish Council

Address: clerk@oldsomerbypc.co.uk

Decision (including any steps ordered)

1. The complainant has requested information with regards to a consultant. Old Somerby Parish Council (the council) provided some information and stated that the remaining information had already been provided to the complainant in response to a previous request. During the Commissioner's investigation the council located further information and confirmed that was all that was held.
2. The Commissioner's decision is that the council holds no further information but breached section 10(1) of the FOIA in providing the information it did hold outside the required 20 working day response time.
3. As the information has been provided, the Commissioner does not require the council to take any steps.

Request and response

4. On 24 July 2019, after providing some background information, the complainant made the following request to the council with regards to the Neighbourhood Plan:

"... please regard this e-mail as my FOI request for information relating to the appointment of the new Planning Consultant.

Such information will include the brief in accordance which he was appointed; documents relating to the application for grant funding by which he is being paid, and documents relating to his contract of engagement which it is to be expected will also contain reference to the task which the Parish Council engaged him to undertake."

5. The council responded on the 9 August 2019. It stated that the complainant has previously requested the same or similar information to which the following was provided to him:

- a) A copy of minutes of the Neighbourhood Plan Steering Group dated 21 August 2017 which dealt with the appointment of the existing consultant. (Item no. 60 in the bundle delivered to him of the 17 September 2018).
- b) A copy of the proposal from the consultant dated August 2017 which formed the basis for his appointment (item no. 61 of the same above bundle). The council advised no other contract or engagement brief exists.

6. The council also stated that the minutes of the council dated 13 September 2017 are available on its website and it attached the remaining documents – the applications for grant funding from groundwork dated 10 October 2017 and 1 June 2018.

7. The complainant requested an internal review on the 28 August 2019 as he considered that the council had not provided him with all the information it holds relevant to his request.

8. The complainant highlighted what information he considered has not yet been provided. This being, but not limited to:

"the brief in accordance which the Consultant was appointed and documents relating to his engagement which it is to be expected will also contain reference to the task which the council engaged him to undertake."

9. The complainant also considered that the majority of the requested information was generated by the clerk and it is reasonable that some of this remains in his possession.

Scope of the case

10. The Commissioner received a complaint from the complainant on the 2 October 2019 complaining that the council has not provided him with all of the information it holds to the request.
11. During the initial stages of the Commissioner's investigation, the council advised that there was a clerical error made in its 9 August 2019 response to the complainant with regards to the reference to 13 September 2017 minutes. The council stated that this should have read 5 September 2017 minutes and a copy of those minutes were forwarded to the complainant. The council advised that these minutes were published on its website at the time of the request.
12. Further enquiries found that there was an email dated 13 September 2017 from the previous clerk to the consultant enclosing a formal offer for the position of consultant, which was referred to in correspondence forwarded to the complainant on 12 February 2019 but not provided. On locating this information, the council disclosed a copy to the complainant on 13 February 2020.
13. The Commissioner considers the scope of the case is to determine whether the council holds any further information falling within the scope of the request.

Reasons for decision

Section 1(1) of the FOIA.

14. Section 1(1) of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information within the scope of the request, and if so, to have that information communicated to him.
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds

any information within the scope of the request (or was held at the time of the request).

16. The Commissioner asked the council about the searches it has carried out in order to determine whether it holds any further information falling within the scope of the request and to consider whether the information raised in the complainant's internal review request is held.
17. The council has told the Commissioner that to the best of its knowledge, it is not aware of the existence of any other documents or records relating to the request.
18. The council has explained that it contacted the current consultant, who the request relates to, and members of the Steering Group, including the previous chair of the council at the time.
19. The council stated to the Commissioner that the requested information is held by the current clerk and that the council does not own or use a laptop.
20. The complainant has questioned the council's position on not owning a laptop. The complainant says that the council uses one primarily for recording traffic speed data downloaded from the street-mounted radar gauge. The complainant says that he has personally transferred neighbourhood plan relevant data to it when it was in the possession of the previous Chair.
21. The Council has clarified to the Commissioner that it does have an old laptop which is and has always been solely used by the local volunteers who look after the Speed Indicator and who produce speed data information for the Council from time to time. That laptop is not used for any other council business.
22. The council states that it has been checked independently of the clerk and no data relating to the neighbourhood plan is stored on it or has been transferred to it. The laptop has been always been in the sole possession of the volunteers with no known access to it by the complainant.
23. The council has told the Commissioner that all information is held electronically or replicated on paper based files. Searches of its electronic records involved searching relevant folders associated with the council's previous and current email addresses.
24. It has also confirmed that the personal email address of the current clerk has also been previously searched independently of the clerk with no other information found falling within the scope of this request.

25. It explained that, searches of the council's paper-based records involved very careful inspection of all relevant folders and the required information was extracted and copied to the complainant.
26. The council has said that it holds several paper-based folders and also an electronically based folder dedicated to the complainant which were thoroughly searched.
27. The council has stated the clerk is the only employee, and a councillor attended the clerk's office to conduct a repeat search. He carried out searches using several search terms but no further documentation was found.
28. The council has told the Commissioner that the search terms used were: the consultant's name, contract, engagement and appointment.
29. The council has told the Commissioner that it is not aware of any information relevant to the request being deleted or destroyed and that it does not have a formal records management policy but it expects the practice of previous clerks to be adopted by the current clerk. Accordingly, files are kept for the various activities of the council dealing with correspondence, financial matters, policies, minutes and agendas, complaints, Asset Register etc. The Parish Council expects all such information to be retained and not destroyed. All such files are available for inspection.
30. The council has acknowledged that previous councillors may have had copies of emails, but it is clearly understood from previous enquiries that the practice of deleting held information once they have left the council was widely adopted.
31. With regards to the formal offer that was located during the Commissioner's investigations, the complainant states this offer of contract seems inadequate – as it mentions no contract sum or the nature of the task to be performed. Nor is there a response from the Consultant confirming receipt of this offer.
32. The formal offer stated: *"On behalf of Old Somerby Parish Council may I formally offer you the position of Consultant to the Neighbourhood Plan."*
33. The council has told the Commissioner it is unaware of any response being received following the email offering the contract.
34. The council has also told stated that the basis of the consultant's employment was based on the consultant's proposal of August 2017, which was provided to the complainant in a previous request. The council reiterates that there is no other contract of engagement brief.

35. The council has even advised the Commissioner that it has checked this with the consultant who responded on 21 November 2019 stating "I can therefore confirm that the only documentation that formed the basis for my appointment was my proposal for consultancy support"
36. The complainant points out that, in an email dated 8 September 2017, the sender of the email writes that he presumes the Clerk is already liaising with the Consultant. The complainant considers this is a clear indication of the existence of further information falling within the scope of his request, relating to the Consultant's brief.
37. The Commissioner has asked the council about this and the clerk has confirmed that he is not aware of any held correspondence, but there had been some unrecorded phone calls and meetings.
38. The consultant's response to the email of 8 September 2017 offers to provide a 'list of ideas to think about' which the complaint has suggested could also be information relevant to his request.
39. The council has looked in to this, and located an email from the consultant dated 2 October 2017 with an attachment titled '*Old Somerby Neighbourhood Plan Preparing the evidence base*'. However, the council states this has nothing to do with the contract for the consultant but is a list of issues needing to be addressed, as in any case, where a Neighbourhood Plan is being considered.
40. The Commissioner has viewed this attachment and agrees that this document is outside the scope of the request.
41. The complainant has stated to the Commissioner that the former council clerk was the one asked to confirm the consultant's appointment. He also states that the previous clerk would make notes on his personal laptop during the course of meetings and presumably used it for emails etc whilst he was clerk.
42. The council has responded to the Commissioner on this stating that it is not aware of any information being transferred from the previous clerk's personal laptop. However, a USB stick was passed to the previous chairman, which was then passed on to the current clerk following the previous clerk's resignation. This USB stick was searched by the council and apart from the email of the appointment, no other information was found relevant to the scope of the request.
43. The council maintains that there is no further information held.
44. The Commissioner has reviewed the above and is satisfied that the council has carried out relevant and appropriate searches for information falling within the scope of the request. It has located further information

during the Commissioner's investigation and provided what was within the scope of the request.

45. With regards to the offer of contract, this did not provide the level of detail that the complainant expected from a contract offer.
46. However, the council's position is that the proposal made by the consultant in August 2017 (which was provided to the complainant in his previous request) is the basis for the appointment and it has maintained this position throughout this request.
47. The legality of whether the council can use the consultant's proposal in this way is not something the Commissioner can determine, as it is outside her remit, she can only determine whether information is held or not in this case.
48. The Commissioner has to make a decision based on the balance of probabilities and so if the council considers that the consultants proposal can be used as the basis for the appointment, then it would indicate why the council does not consider it needs any other documentation to cover this, and therefore it can be surmised that if the council is of this view, it would not create a further document to this effect.
49. Based on the above, the Commissioner is satisfied that on the balance of probabilities, the council holds no further information falling within the scope of the request.

Section 10(1) of the FOIA – Response time

50. Section 10(1) of the FOIA requires a public authority to comply with section 1 of the FOIA within 20 working days following the receipt of a request.
51. Section 1(1) of the FOIA requires a public authority to confirm whether it holds information within the scope of a request and, if appropriate, provide a copy of the information it holds.
52. In this case, the request was made on 24 July 2019 and the council provided the information located during the Commissioner's investigation, on 13 February 2020. This is outside the required 20 working days and therefore a breach of section 10(1) of the FOIA.
53. As the information has been provided, the Commissioner does not require the council to take any steps.

Right of appeal

54. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

55. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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